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 Attorneys for Defendants
 Roman Catholic Archdiocese of Newark
 (i.p.a. "Archdiocese of Newark"),
 St. Theresa's R.C. Church (i.p.a.
 "St. Theresa School"), Joseph W. Cardinal
 Tobin (i.p.a. "Cardinal Joseph Tobin"),
 Rev. Msgr. Thomas P. Nydegger, V.G.
 (i.p.a. "Msgr. Nydegger"), Dr. Margaret Dames,
 James Goodness, Father Joseph Bejgrowicz,
 Deacon Joseph Caporaso (i.p.a. "Joseph Caporoso"),
 Sister Helene Godin, Richard Donovan, and Anh Bui

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY**

SCOTT PHILLIPS, AS GUARDIAN AD
 LITEM, ON BEHALF OF S.P., B.P. and K.P.
 and SCOTT PHILLIPS,

Plaintiff,

v.

ARCHDIOCESE OF NEWARK, ST.
 THERESA SCHOOL, ST. THERESA
 CHURCH, CARDINAL JOSEPH TOBIN,
 MSGR. NYDEGGER, MARGARET DAMES,
 JOHN DOES 1-100, JOHN DOE
 CORPORATIONS 1-5, JOSEPH
 BEJGROWICZ, JOSEPH CAPOROSO,
 HELENE GODIN, SR. JULIETT PEREZ,
 RICHARD DONOVAN, ANH BUI, JAMES
 GOODNESS, ROBERT GRIMALDI, WANDA
 GRIMALDI, MATT POPOLA, LINDA KOSKI,
 MAKAYLA KOSKI, MARY FERRIS, AMBER
 PROTZ SIERANT, CHERYL KREINBERG,
 JONATHON KREINBERG, PETER
 RUNFOLO, JOYCE RUNFOLO, RICH
 HARRINGTON, KELLY DONOVAN,
 JEANNIE PAVLIK, MATTHEW PAVLIK,
 JAMES PAVLIK, MARYANN GASPER,

Civil Action No. 2:18-cv-12207 (MCA) (LDW)

**STATEMENT OF MATERIAL FACTS
 AS TO WHICH THERE IS NO
 GENUINE DISPUTE PURSUANT TO
 FED.R.CIV.P. 56(c)**

THERESA ADUBATO, HEATHER :
 INGERSON, MARIA HARRIS, HEATHER ST :
 JOHN, YANCY MUNOZ, KATHLEEN :
 SPOONAUER, CELIA SOUSA, EILEEN :
 KELLY-O'BRIEN, VICTORIA DEVLIN, :
 ROSEMARY RUBSAM, ROSANELLY :
 MONTALVO, GERRI COLON, LAURIE :
 GRIMES, MICHELLE CERNADAS, JOSEPH :
 KRATZER JR., NATALIE WOOD, PATRICIA :
 LANDAU, AMY REITHEL, ANN FERRARI, :
 CYNTHIA GAILLIOT, BERADINE GILRAIN, :
 BONNY HOTRA, BLANCA PASTORE, :
 IZAIDA ROSA GARBANZO, JO RIVERA, :
 DENISE, RICHARD, JOSEPH, JESSICA, :
 NICHOLAS MIRABELLA, JOCELYN :
 EDRALIN, MANUEL VAGUEIRO, KERRI :
 KILLEN, JO ANN NETTA, NANCY :
 ZIMMERMAN, MARIA STREKO, ROCIO :
 CORVALAN, CHRISTINA RESTUCCIA, :
 MICHAEL DEVLIN, GUILLERMO MUNOZ, :
 DEBORAH GIVENS/MATE, KAREN :
 ZIMMERMAN, JIM HANNON, ALICE :
 SCALA, EMILY VIDAL, MARY GAINES, :
 SUSAN GIORDINO, ROSEANNE SCHUR, :
 ANGELA LOMBARDI, ROGER SCHUR, :
 MICHAEL MONTALVO, JEFF FERRARI, :
 WILLIAM GORSKI, ROGER STRYESKI, :
 THOMAS BRACKEN, FRED SOOS, SUSAN :
 DOUGHERTY, MICHELE MILLER, ANN :
 MORTIMER, TRISH RICKEN PLUMMER, :
 ANDREA ZAGORSKI SCHUSTER, MARIA :
 BUI, AMY ROSE, KELLY ANN HARRIS, :
 PATRICIA RIMILI BLICHARZ, "BCSH9094", :
 "STDA" AND "BEEZLEBROX", :

Defendants.

Defendants, Roman Catholic Archdiocese of Newark (i.p.a. "Archdiocese of Newark"), St. Theresa's R.C. Church (i.p.a. "St. Theresa School"), Joseph W. Cardinal Tobin (i.p.a. "Cardinal Joseph Tobin"), Rev. Msgr. Thomas P. Nydegger, V.G. (i.p.a. "Msgr. Nydegger"), Dr. Margaret Dames, James Goodness, Father Joseph Bejgrowicz, Deacon Joseph Caporaso (i.p.a. "Joseph Caporoso"), Sister Helene Godin, Richard Donovan, and Anh Bui (collectively, the "Church Defendants"), by their undersigned counsel, submit this Statement of Material Facts for which

there is no genuine dispute, pursuant to Fed.R.Civ.P. 56(c), in support of their motion for partial summary judgment seeking the dismissal with prejudice of Count One of Plaintiffs' Complaint.

1. Plaintiffs filed this matter in the Superior Court of New Jersey, Essex County, Law Division, on July 2, 2018. See Declaration of Brian H. Fenlon, Esq. ("Fenlon Decl."), Exhibit A, Complaint.

2. Count One of the Complaint alleges, in part, a violation of "Title IX, 20 U.S.C. Sections 1681-1683 et seq." Id.

3. Based upon Plaintiffs' assertion of a claim arising under that federal statute over which this Court has original jurisdiction, the Church Defendants removed this matter to federal court on July 30, 2018 [ECF No. 1].

4. On April 12, 2019, the Court issued a Letter Order [ECF No. 59] directing counsel for Plaintiffs and the Church Defendants "to show cause why Count One should not be dismissed for failure to state a claim under Title IX of the Education Amendments Act, 20 U.S.C. § 1681 et seq."

5. Plaintiffs and the Church Defendants filed their respective briefs on April 22, 2019 [ECF Nos. 60, 61].

6. On April 25, 2019, the Court ordered “that the parties shall engage in limited discovery on the issue of whether St. Theresa School is a recipient of federal funds within the meaning of Title IX” [ECF No. 69].

7. After several interactions with the Court about the scope of the ordered limited discovery, the Church Defendants served discovery responses upon the Plaintiffs’ counsel on December 9, 2019, in the form of their answers to the Plaintiffs’ Interrogatories upon them. See Fenlon Decl., Exhibits E and F.

8. In response to the Plaintiffs’ direct questions, Defendant Roman Catholic Archdiocese of Newark answered that during the school years of 2016-17 and 2017-18 it received no “federal funding” as that term is defined for purposes of Title IX and similar federal anti-discrimination statutes. See Fenlon Decl., Exhibit E.

9. In response to the Plaintiffs’ direct questions, Defendant St. Theresa School (“STS”), answered that during the school years of 2016-17 and 2017-18 it received no “federal funding” as that term is defined for purposes of Title IX and similar federal anti-discrimination statutes. See Fenlon Decl., Exhibit F.

10. STS did clarify therein that some of its students and teachers received equitable services funded by the federal government during the school years of 2016-17 and 2017-18 under the IDEA, Title I, and Title IIA programs. Id.

11. The U.S. Department of Education explains that private schools whose students or teachers receive equitable services are not considered to be “recipients of federal financial assistance”, for purposes of federal civil rights and discrimination laws. See Fenlon Decl., Exhibit F; <https://www2.ed.gov/about/offices/list/oi/nonpublic/faqgeneral.html%3Fsrc%3Dpreview>; Fenlon Decl., Exhibit G.

12. Following the service of their discovery responses by Church Defendants, the Court directed Church Defendants to submit an application seeking the dismissal of this matter for lack of subject matter jurisdiction [ECF No. 92].

13. The Church Defendants received no federal funding or federal financial assistance in the relevant time period 2016-2018, of the nature and kind that would be sufficient to trigger the applicability to them of federal anti-discrimination statutes, such as Title IX. Thus, the Plaintiffs have no competent evidence demonstrating the Church Defendants’ received such funding/financial assistance, a necessary and requisite element of a viable Title IX discrimination claim. Therefore, any Title IX claim raised in Count One of the Complaint fails, as a matter of law.

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Nydegger"), Dr. Margaret Dames, James Goodness,
Father Joseph Bejgrowicz, Deacon Joseph Caporaso
(i.p.a. "Joseph Caporoso"), Sister Helene Godin,
Richard Donovan, and Anh Bui

By: /s/ Christopher H. Westrick
CHRISTOPHER H. WESTRICK

Dated: February 21, 2020

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